

Message

From: Bwinder [bwinder@mcmillan-mcgee.com]
Sent: 4/10/2020 11:39:32 PM
To: Norman Bernstein [nwbernstein@nwblc.com]
CC: Chris Braun [cbraun@psrb.com]; Andy Gremos [agremos@ramboll.com]; Suzanne OHara [SOHara@geosyntec.com]; Krueger, Thomas [krueger.thomas@epa.gov]; Ohl, Matthew [ohl.matthew@epa.gov]; Peter M. Racher Esq. [pracher@psrb.com]; David Rountree [drountree@mcmillan-mcgee.com]; Shannon L. Kelley [skelley@parlee.com]; Eric Ringdahl [eringdahl@mcmillan-mcgee.com]
Subject: Re: Zionsville electrical service

Mr. Bernstein,

To be certain, your email of March 31 states that:

“.....information on the details of a DNAPL area sampling plan that was approved late last week by EPA. Implementation of that sampling plan (which includes groundwater sampling to 46 feet bgs) will require the cooperation of MM.....”

After seeing this note from you I would have expected an updated sampling plan with the appropriate details and methodology to collect water to a depth of 46-feet. However, the same document from February 2020 was provided to us that did not include any reference to groundwater sampling to a depth of 46-feet. Please note that the addendum refers to procedures for “attempting” to collect groundwater samples from 40-46 feet BGS. I am certain you can understand my hesitancy when seeing the word “attempt” being used to describe an activity that we believe to be critical to the understanding of the problem. Surely we can do better than attempting to collect groundwater from these relatively shallow depths.

Therefore, I respectfully disagree with your assertion that a conference call is pointless and intend to speak with Mr. Ohl at his earliest convenience.

Cheers,

Brent

On Apr 10, 2020, at 3:56 PM, Norman Bernstein <nwbernstein@nwblc.com> wrote:

Mr. Winder:

On April 6, 2020 you received and acknowledged receipt of the attached letter from our counsel Christopher Braun which among things attached the groundwater sampling Addendum dated March 13, 2020 to the DNAPL sampling plan. That same Addendum was also communicated to you by email from me on March 31. It plainly provides for groundwater sampling to a depth of 46 feet in accordance with the Addendum. That Addendum and the sampling plan were approved by EPA on March 25, 2020. That approval of March 25, 2020 was also attached to Mr. Braun's communication to you on April 6, 2020.

We understand from the last sentence of your email that MM is prepared to cooperate in the temporary relocation of its equipment within the secure fenced DNAPL area so that DNAPL area sampling can proceed. Accordingly, Ramboll will be in touch with you on Monday regarding its requirements for the relocation of specific equipment to implement the sampling plan.

No purpose would be served by a conference call,

Norman Bernstein, Trustee, Third Site Trust Fund

On Fri, Apr 10, 2020 at 5:19 PM Bwinder <bwinder@mcmillan-mcgee.com> wrote:
Mr. Bernstein and Mr. Ohl,

We are in possession of the most recent sampling plan and have reviewed it along with the email from Jessica Contos that was received on April 6. There are a few important points to note:

1. Your email dated 2020-03-31 specifically states that the EPA-approved sampling plan includes groundwater sample collection to a depth of 46-feet bgs. However, the sampling plan that you attached to your email does not mention any groundwater sampling at these depths. Rather, the groundwater sampling suggested in this plan appears to stall at approximately 37-feet BGS. Did you send the incorrect version of the sampling plan? If so, please forward the correct one to us at your earliest convenience so that we may review it. If not, then please read on.
2. Nowhere in your sampling plan do you address groundwater sampling below 40-feet.
3. Only in the Memo to Matthew J. Ohl of the EPA is the request for groundwater sampling to 46-feet acknowledged, and then discounted as impractical due to difficult conditions for direct-push methods.
4. Nowhere in the sampling plan from Jessica Contos is groundwater sampling mentioned until the very last two pages of the memo and this appears to be a simple attachment of the aforementioned memo to the USEPA.

We agree with most of the aspects of the sampling plan. The methodology in the upper regions above 37-feet is consistent with proper NAPL characterization. That is, to use groundwater samples to determine where soil sampling should be completed. However, the logic that is in use for the deep region is completely opposite and would attempt to only drill groundwater wells if soil sampling were indicative of an elevated concentration. This would be akin to looking for a needle in a haystack and is not consistent with best practices in the industry. It is curious that the reverse philosophy/methodology is used in the deep region where we believe elevated concentrations to reside.

Mr. Ohl - McMillan-McGee is deeply invested into this project and wants to see a successful outcome for the EPA. This includes getting to the bottom of the actual problem at this site. I am not confident that all parties can make the same claim.

I would like to request a conference call with you at your earliest convenience so that we can discuss collecting our own groundwater samples in a proper manner and below the ~37-feet that has been suggested in this sampling plan. I feel that once appropriate groundwater samples are collected and from the appropriate depth we can come up with a more accurate depiction of the COCs at the site the site and then move forward with a proper remedial plan. I look forward to speaking with you at your earliest convenience.

We want to be helpful in this exercise and have no issues with re-locating our equipment to make room for the appropriate sampling machinery. Please realize that current conditions with COVID-19 may limit our ability to respond in a timely manner but we will make every effort to accommodate.

Sincerely,

Brent

*Brent Winder
Vice-President
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On Mar 31, 2020, at 12:54 PM, Norman Bernstein <nwbernstein@nwblc.com> wrote:

Mr. Winder

I'll await your response. Once I have that, the Trustees have some decisions to make.

Norman Bernstein

On Tue, Mar 31, 2020 at 2:39 PM Bwinder <bwinder@mcmillan-mcgee.com> wrote:

Mr. Bernstein,

Thank you for your email. We will review it as soon as possible.

Can you respond as to whether you will allow the utility access to the site or is this something that is contingent on our responses to this email?

I look forward to your reply.

Cheers,

Brent

On Mar 31, 2020, at 12:33 PM, Norman Bernstein
<nwbernstein@nwblc.com> wrote:

Mr. Winder

A. Attached are the sampling plan, the groundwater addendum, EPA approval and requests regarding additional work and information, and Geosyntec response to EPA. You now have the same information we have..

B. Questions 2 and 3 are repeated.

C. As to question 4, it is clarified to read "*and no removal of any equipment from the site fenced area unless approved in writing and in advance by the Trustees or as authorized under MM's contract.*"

I await your response to 2, 3, and 4 (as clarified) .

Norman W. Bernstein

On Tue, Mar 31, 2020 at 2:05 PM Bwinder
<bwinder@mcmillan-mcgee.com> wrote:

Mr. Bernstein,

Thank you for your email.

I have itemized your points below as I believe that this is the best way to respond. My responses to each are in RED following your query.

Do I have your assurance on these points:

1. *restoration of electrical service when needed as determined by the Trustees.* Yes.
2. *temporary relocation and restoration of equipment within the locked site fence area as needed to facilitate implementation of the EPA approved sampling plan.* No. We have not seen the sampling plan nor been apprised of the sampling equipment and its dimensions so we cannot determine accessibility at this time or even if the equipment will fit within the confines. It is also noted that there are currently travel restrictions associated with COVID-19 that may impede our personnel from reaching the site. We have also not seen the schedule for the sampling plan to properly comment on this.
3. *cooperation in the implementation that sampling plan without further comment on it by MM;* No. We have not seen the sampling plan and, as such, cannot assure you that we will not have additional comments. I find it quite curious that you are asking us not to comment on something we have yet to see.

4. *and no removal of any equipment from the site fenced area unless approved in writing and in advance by the Trustees.* No. I do not know if the above item refers to the time of the sampling event or in general and therefore cannot agree to it.

I fail to see how these last three points have any bearing on the request to grant the utility access to the site to pull the fuses and can't help but wonder if a quid pro quo is being sought. Is that the intent of this email? Are you asking us to relent on all of these points prior to allowing access to the site?

I ask again if you will grant access to the utility to complete the requested task. A simple yes or no answer will suffice.

Cheers,

Brent

On Mar 31, 2020, at 11:02 AM, Norman Bernstein <nwbernstein@nwblc.com> wrote:

Mr. Winder

Thank you for your email.

You will be receiving either late today or tomorrow information on the details of a DNAPL area sampling plan that was approved late last week by EPA. Implementation of that sampling plan (which includes groundwater sampling to 46 feet bgs) will require the cooperation of MM in temporarily relocating equipment to a mutually agreed laydown area within the site locked fence boundary and restoration of that equipment as directed by the Trust. as needed. There is to be no further comment by MM on the EPA approved sampling plan and no equipment is to be removed from the locked site fence area.

Do I have your assurance on these points:
restoration of electrical service when needed as determined by the Trustees; temporary relocation and restoration of equipment within the locked site fence area as needed to facilitate implementation of the EPA approved sampling plan; cooperation in the implementation that sampling plan without

further comment on it by MM; and no removal of any equipment from the site fenced area unless approved in writing and in advance by the Trustees? Please answer simply yes or no.

Thank you.

Norman W. Bernstein, Trustee

On Tue, Mar 31, 2020 at 12:31 PM Bwinder
<bwinder@mcmillan-mcgee.com> wrote:

Mr. Bernstein,

We did not inform you last week that we had requested that the local utility pull the fuses on the electrical service as a cost saving measure to the project. We regret this omission. However, when they arrived to complete this work your security personnel would not allow them on site.

We continue to receive invoices from the utility at a rate of more than \$1,500/month even while there is no electricity being used. We think that is prudent for all involved to minimize all possible project costs, especially in these uncertain times.

We respectfully request that you allow access for the utility personnel to the site so that the fuses can be removed and the invoicing from the utility can cease for the time being. The service can be reconnected very quickly at a later date, if warranted.

Your urgent attention to this matter is appreciated.

Sincerely,

Brent

*Brent Winder
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<Third Site DNAPL Area Sampling Work Plan As Submitted 2-12-2020.pdf><As submitted to EPA 3-13-2020 Addendum to the DNAPL Area Sampling Wok Plan (2).docx><Matt Ohl's E-mail of 3-25-2020 requesting additional DNAPL area work.pdf><March 27 2020 Memo from Geosyntec Responding to Matt Ohl DNAPL Containment Area Comments of 3-25-2020.pdf>

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<Chris Braun 04-06-202 Letter to MM demanding answer.pdf>